Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
International Settlements Policy Reform	)	IB Docket No. 11-80

REPLY COMMENTS OF TONGA COMMUNICATIONS CORPORATION LTD.

Eric Mark Braun
EMB Legal Pty. Ltd.
Level 34
50 Bridge Street
Sydney, Australia 2000
ericbraun@emblegal.com
Counsel for TCC

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I. Summary

Tonga Communications Corporation Ltd. ("TCC"), by its undersigned counsel, hereby makes reply comments on:

(i) the Commission's proposal to consider on a case-by-case basis extending its Benchmark rates to re-origination traffic; and

(ii) AT&T's 2009 proposal that the Benchmark rate of $US0.19 per minute be mandated by the FCC for all re-origination traffic on the US – Tonga route ("the AT&T proposal").

TCC generally supports the comments of Digicel (Tonga) Limited (dated 18 August 2011) in opposition to the above proposals.

For the further reasons given herein, TCC opposes the AT&T comments in support of the AT&T proposal, and supports the Verizon comments against the AT&T proposal and generally against the application of direct traffic Benchmarks to re-origination traffic.

In summary, TCC's position is that:

(i) As acknowledged by Verizon in its comments, an extension of direct traffic Benchmark rates to re-origination traffic (including the $0.19 Benchmark applicable to US – Tonga direct traffic) is not necessary, is likely to harm US consumers and US carriers, and would be unworkable given the characteristics of re-origination traffic. The FCC should give substantial weight to these comments, as they are made by a major US carrier that previously supported the stop payment orders relating to direct traffic on the US – Tonga route;

(ii) There is no evidence of current or recent anti-competitive conduct relating to the US – Tonga route that could justify further regulation. As Verizon acknowledges, the 2009 stop payment orders for the US – Tonga route arose from a minimum termination rate mandated by the Tongan Government, which the Tongan Government subsequently removed (in April 2010) following government-to-government consultations.

(iii) Arrangements for re-origination traffic are significantly different than for direct traffic, such that it is unworkable and undesirable to apply the direct traffic Benchmarks to re-origination traffic;

(iv) Prior to making a decision about the AT&T proposal, the FCC would have to undertake substantial further investigation, including consideration of a requirement that any reductions in US – Tonga settlement rates be passed-through to retail charges for US – Tonga calls, and consideration of the effect of the AT&T proposal on current re-origination arrangements, Tonga, and Tongan network operators. Such further investigation is not warranted given the very small amount of US – Tonga traffic, and the acknowledgement by Verizon that further regulation of this route is not needed;

(v) AT&T is the only US carrier to support the extension of the US – Tonga direct traffic Benchmark to re-origination traffic. AT&T relies on a speculative and general comment that a failure to apply a direct traffic Benchmark rate to re-origination traffic may undermine benefits otherwise obtainable from that Benchmark. This is insufficient, as AT&T does not demonstrate that the US – Tonga direct traffic Benchmark rate is being undermined by US – Tonga re-origination arrangements, or that the AT&T proposal would benefit US consumers or be workable in practice.

(vi) There is substantial doubt that the Benchmark rate of $US0.19 is appropriate for US – Tonga re-origination (or direct) traffic.

II. There Is No Basis For Further Regulation Of The US – Tonga Route

The AT&T proposal arose in the following circumstances:

1. Prior to 2009, international call termination rates in Tonga had fallen significantly (which TCC says was due to whipsawing activities by US carriers);

2. In response, the Tongan Government established a minimum termination rate that US carriers declined to adopt, resulting in direct circuits not being able to be operated by TCC (or Digicel (Tonga) Limited) under the local law mandate;

3. In November 2009, the FCC made stop payment orders prohibiting direct US carrier payments to TCC or Digicel (Tonga) Limited above the Benchmark rate of $0.19;

4. Effective April 2010, the Tongan Government removed the minimum termination rate.

5. Since the removal of the Government-mandated minimum rate, the US carriers apparently have elected to use re-origination or other arrangements with third-party carriers, rather than direct arrangements with TCC. TCC is not aware of the details of these arrangements, including the rates.

The above chronology illustrates that there is no current reason for the FCC, as proposed by AT&T, to undertake what is in effect an experiment in re-origination regulation solely for the tiny destination country of Tonga.

The circumstances that gave rise to the FCC stop payments orders in 2009, namely a minimum rate mandated by the Tongan Government, no longer exist. Further, Verizon has stated in its comments in this proceeding that in light of the change in position by the Government, the prior proposal to regulate US – Tonga re-origination traffic is not needed.

The NPRM states that an order for a Benchmark rate to be applied to re-origination traffic on a particular route would be "removed upon a finding that the anti-competitive conduct on the international route had ceased . . . " (NPRM, ¶55). However, there is no basis for a finding that there currently is any anti-competitive conduct on the US - Tonga route. It follows that there is no basis for considering, much less adopting, the AT&T proposal.

III. The AT&T Proposal Would Not Promote The Interests Of US Consumers, And Would Unfairly Prejudice Tonga And Tongan Network Operators

The prior rule establishing Benchmark rates for broad categories of worldwide direct termination traffic was justified based on determinations by the FCC that:

(i) the Benchmark rates would substantially benefit US consumers due to reduced worldwide termination rates being passed on to US consumers by US carriers; and

(ii) the Benchmark rates would not unfairly prejudice destination operators or economies.

There is no, or patently insufficient, support in the record for either of these justifications applying to the implementation of the AT&T proposal, or more generally to the imposition of direct traffic Benchmark rates on a case-by-case basis to re-origination traffic to particular destinations.

In relation to pass-through benefits to US consumers from the prior implementation of worldwide direct traffic Benchmark rates, the NPRM refers to data showing that the average settlement rate paid by US carriers for worldwide termination has declined substantially less than the average IMTS revenue per minute. According to the FCC, this indicates that overall, the benefits of past worldwide settlement rate reductions have been passed through to US consumers. (NPRM ¶60).

Significantly, however, the NPRM acknowledges major deficiencies in the above data and conclusion. These include that the IMTS revenue per minute reflects a mix of wholesale and retail rates, may exclude non-route-specific calling plan revenue, that there is evidence some US carriers have increased their retail "basic rates," and that average reductions in revenue per minute and settlement rates do not demonstrate that settlement rate reductions have flowed through uniformly to all segments of the retail market. Due to these concerns, the NPRM seeks comment on what other data or factors should be considered, or other actions taken, in relation to the pass-through of settlement rate reductions to US consumers. (NPRM, ¶ 60).

TCC believes the above data issues are of serious concern. In particular, the FCC would not be able to draw any conclusion of full pass-through even on an average basis of settlement rate reductions. More importantly, the FCC would certainly not be able to draw any conclusion that settlement rate reductions have been passed through uniformly or fairly, or for particular calling destinations.

Such "global-average" data therefore cannot be used to support the AT&T proposal, which is for further regulation of a single calling route. This data provides no indication whether US carriers have so far passed on settlement reductions on a country-by-country basis, or that they would do so in relation to any future settlement rate reductions for US – Tonga traffic.

The best way for the FCC to address this glaring deficiency in the AT&T proposal would be to adopt a policy that further regulation of termination rates for a particular country include a condition that US carriers pass on any future reductions in settlement payments to the retail charges for calls to the particular country. Since, based on AT&T's comments, such a condition is apparently is not acceptable to AT&T for inclusion in the AT&T proposal, the AT&T proposal should not be adopted.

The need for such a pass-through requirement is illustrated by the following hypothetical scenario in which it assumed (for the purpose of this illustration only) that the AT&T proposal were adopted and did result in a decrease in settlement payments:

(i) The FCC orders the $0.19 Benchmark rate to be applied to all US – Tonga re-origination traffic;

(ii) following this, the per minute settlement amounts paid for US – Tonga traffic from US carriers decrease by 20%; and

(iii) the US carriers do not decrease retail rates for calls to Tonga.

In this hypothetical situation, it may be that there is no benefit to any US consumers (i.e. – the reductions are not passed on to US – Tonga callers, or any other US consumers). In this event, the AT&T proposal would serve no legitimate purpose, as its "benefits" are appropriated entirely by US carriers.

Alternatively, even if the above-hypothesized US – Tonga settlement rate reductions occurred and were passed-though to US-originated calls to destinations other than Tonga, that would unjustifiably and irrationally harm the legitimate interests of:

(i) the small and discrete segment of US consumers (mainly Tongan visitors, Tongan citizen resident in the US, and US businesses with links to Tonga) who make the very large majority of calls to Tonga; and

(ii) the Tongan economy and the network owners in Tonga.

In this alternative scenario, the US-based customer segment making calls to Tonga would obtain no price reduction benefit. That would mean that there also would not be an increase in traffic volumes to Tonga arising from such reduced retail rates.

Significantly, AT&T's comments (p.2-3) refer to an increase (quadrupling) in US - international calling volumes for all countries since the Benchmark policy was implemented, and claims this as a key benefit of the policy for US consumers and destination countries. However, there is no reason to believe this key benefit would arise if the AT&T proposal were adopted. Indeed, in light of the very small amount of US – Tonga traffic, it seems particularly unlikely that US carriers voluntarily would pass through any reduction in US – Tonga traffic settlement rates to US consumers making US – Tonga calls.

The FCC previously has acknowledged the legitimate interest of less-developed destination countries in receiving sufficient termination revenue to support local network viability and further network development. (IB Docket No. 96-261 International Settlement Rates, Report and Order Adopted: August 7, 1997, at ¶105-106).

This concern is particularly relevant in the case of Tonga. It has a very high proportion of international traffic relative to domestic traffic, and a high proportion of US-originated international traffic. This is due to the significant number of overseas Tongans in the United States relative to the local Tongan population, the larger incomes of the US-based Tongans, and the significance locally of the US-based tourism industry. As a result, termination revenue from incoming overseas calls, and in particular those from the United States, are key factor underpinning the viability and improvement of local telecommunications networks, and commercial development generally, in Tonga.

In summary:

(i) The prior reductions in average US international call retail price indicators as compared to reductions in average international termination charges paid by US carriers says nothing about prior or future pass-through of reduced termination charges arising from regulation of a particular country route, especially where the destination market is very small, as in the case of Tonga; and

(ii) The AT&T proposal cannot claim to promote any US consumer or other relevant interest because it does not include a requirement that US carriers pass through any reductions in termination charges on the US – Tonga route to their US – Tonga retail calling rates.

The need for such a pass-through requirement is further supported by reference to the current US – Tonga retail rates of US carriers, as compared with the proposed re-origination Benchmark rate of $US0.19.

The published current retail rates for AT&T and Verizon are: (i) AT&T: $3.22 - $1.57 per minute, (plus applicable monthly fees); and (ii) Verizon: $1.99 per minute (plus applicable monthly fees for some plans).[1] These rates are between 16.9 and 8.2 times greater than the current direct-traffic

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[1] www.shop.att.com/internationalplancomparison.jspaverage; http://b2b.vzw.com/international/Long_Distance/Asia-Pacific/Tonga%20Island.html.

Benchmark proposed by AT&T for extension to US – Tonga re-origination traffic.

This suggests that US carriers are not engaged in cost-based pricing currently on this route, and would not pass on any future settlement rate reductions (whether arising from the AT&T proposal or otherwise) to US consumers making US – Tonga calls.

IV. Required Considerations In Relation To Re-Origination Traffic

The Benchmark rates were developed for, and have so far been applied only to, direct traffic. They should not be extended to re-origination arrangements, which have entirely different characteristics.

Re-origination traffic involves the following characteristics:

(i) the rate charged by a re-origination carrier to arrange for termination in a destination country may be determined based on factors that go beyond the termination rate charged by the network operator(s) in the destination country. For example, a regional re-origination carrier may negotiate and apply a single "blended" termination rate to a specified volume commitment of traffic destined to any of multiple designated destination countries. In this circumstance, the rate applied may reflect termination charges across the group of destination countries, the expected volumes of traffic to those countries, and the volume of such traffic agreed to be sent by an originating US carrier;

(iii) a re-origination carrier provides additional services to an originating carrier for which an additional margin may be payable. As a result, the application of the Benchmark rate to re-origination traffic, as proposed by AT&T, is likely to lead to a rate below the Benchmark being received by the terminating carrier in the destination country; and

(iii) for re-origination traffic, the US carriers may or may not know the location of the destination country (NPRM at footnote 101, p.17).

These circumstances, and their potential consequences, have not been adequately addressed to date in this proceeding, or in the related prior proceedings.

For example, one likely consequence of the AT&T proposal would be to negate or obstruct efficient commercial re-origination arrangements involving volume commitments and/or a single termination rate for a group of destinations, as referred to above. These arrangements reduce negotiation and other transaction costs and allow origination and re-origination carriers to manage risk and engage in increased competition.

If a re-origination rate of $US0.19 were mandated for the US – Tonga route, that route would either have to be excluded from such arrangements, or routes that otherwise would be included in a bundle with the US – Tonga route would also have to have the Tonga Benchmark rate applied (regardless whether the other destinations were similar in terms of underlying cost or other factors).

Such inflexibility, as opposed to a market-based solution, is undesirable and contrary to current US Government policy. It is particularly inapt in light of the significant and increasing competition in the international market (including by way of VOIP and skype-type services), as referred to the Verizon comments.

Another consequence of the AT&T proposal is that Tongan carriers could be required to accept a termination rate lower than the Benchmark rate in order to participate in re-origination arrangements, due to the extra service and margin of re-origination carriers. The extent of any such reduction or "squeeze" on the termination rate received by Tongan operators has not been considered.

Due to the additional services provided by re-origination carriers, applying the same Benchmark rate to both direct and re-origination traffic also would create an unwarranted regulatory bias in favor of direct termination, as opposed to re-origination.

Finally, it is unclear how the AT&T – Verizon proposal can be applied in the circumstance, referred to in footnote 101 of the NPRM, where a US carrier does not know the destination country of re-origination traffic.

V. There Is Substantial Doubt About The Benchmark Rate Of $US0.19 As Applied To Tonga

The FCC states that any proposal for extension of Benchmark rates to re-origination traffic would allow affected carriers to contest the appropriateness of the applicable Benchmark rate. (NPRM, ¶55). TCC believes the Benchmark of $US0.19 is not appropriate for US – Tonga traffic, and relies on the following considerations:

The Benchmark rates were determined by a method that did not use actual cost data for any country, and instead relied on broad averages of other information, including per capita GNI country groupings. The calculated rates for lower middle and upper middle income countries ($US 726.00 - $US2,895.00 and $US2,896.00 and $US8,955.00 per capita GNI) were said to be virtually the same, so that the same Benchmark rate ($US0.19 per minute) was adopted for both groups.

The absence of any actual cost data, and the result of the same rate for all countries with per capita GNI from $US726.00 - $US8,955.00, are strong indications of error. In particular, it is highly unlikely that a single rate represents a correct, or fair and reasonable maximum rate, for each of these many and diverse countries.

This issue is of heightened concern in circumstances where AT&T proposes to have the above Benchmark rate for all lower and upper middle income countries apply for re-origination traffic only for Tonga, not any other country. In this circumstance, it would be incumbent on the FCC to consider and make a proper determination that the Benchmark rate is, in fact, appropriate for Tonga.

The particular characteristics of the local Tongan telecommunication market indicate that the $US0.19 Benchmark developed for the above two country groups is too low for US – Tonga direct traffic, and/or should not be applied to re-origination traffic.

Tonga has a very small population (about 108,000), which is widely dispersed across several island groups. Given the small size of the domestic market, and the large size relatively of the US-based calling segment, US-based international traffic is likely to represent a much larger component of cost recovery for Tongan operators, relative to other nations.

Tonga also is at the very low end of the upper-middle income countries GNI per capita range for 2011. Finally, as referred to above, the AT&T proposal may result in Tongan carriers receiving rates below the direct traffic Benchmark rate for termination of re-origination traffic.

Conclusion

TCC supports the comments of Verizon that there is no need, or basis, for further regulation on the US – Tonga route, and that the application of direct traffic Benchmarks to re-origination traffic is likely to be contrary to the interests of US consumers and carriers.

TCC also believes that, to the extent the FCC wished at some time in the future to apply a Benchmark rate to re-origination traffic on a particular route, it would need to first make a determination of current and continuing anti-competitive conduct on the route. If such a determination were made, the FCC also would need to investigate and consider the nature of re-origination arrangements on the route, and the likely effect of applying the Benchmark rate to such arrangements. The FCC then would need to give proper consideration to whether the Benchmark rate was fair and reasonable as applied to both direct and re-origination traffic that route. Finally, any decision to apply the Benchmark rate to re-origination traffic would have to include a requirement that future settlement rate reductions on the route be passed through to retail calling charges on the route.

Having regard to the above matters, it is clear that the AT&T proposal cannot be adopted.

Respectfully submitted,

Eric Mark Braun
EMB Legal Pty. Ltd.
Level 34
50 Bridge Street
Sydney, Australia 2000
ericbraun@emblegal.com
Counsel for TCC